IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6533 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SAJID @ BADSHAH KADARBHAI BLOCH

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 6533 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS PUNANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

Heard Ms Subhadra Patel for the petitioner and learned AGP Ms Punani for the other side.

2. By invoking the jurisdiction of this Court under Article 226 read with Article 21 and 22(5) of the Constitution of India, the petitioner - detenu has challenged the legality and validity of the order of detention No.PCB/DTN/PASA/34/2004 dated 17th May, 2004 passed against him by the Police Commissioner, Rajkot City, branding the petitioner as a dangerous person within the meaning of Section 2(c) of the conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

3. For recording the subjective satisfaction the detaining authority has considered mainly the registration of three criminal offences by three different police stations under the administration of the Police Commissioner, Rajkot. The authorities also considered the statements recorded on 13th May, 2004 and verified by the detaining authority on 14th May, 2004. It is submitted that the sponsoring authority has recorded the statement of two witnesses only with a view to prepare a case for detention otherwise there was no reason for both these witnesses to come down to the police station though the alleged incident narrated by these two witnesses had taken place on 13th March, 2004 and 22nd January, 2004. When the statement of these witnesses was recorded by the sponsoring authority the petitioner was on judicial custody and he was enlarged on bail by the Court on 15th May, 2004 and he was arrested for the third offence registered by Gandhinagar Police Station, Rajkot, being C.R.No.I 160 of 2004. It is argued that the authority has erred in recording the subjective satisfaction to the effect that the activity of the petitioner was a threat to the maintenance of public order. The privilege exercised by the detaining authority under Section 9(2) of the PASA Act has been exercised wrongly and this improper exercise of the privilege vitiates the order. Having considered the grounds of detention conveyed to the detenu it emerges that the first offence registered by Rajkot B Division Police Station was actually committed on 25th January, 2003. The second offence registered by A Division Police Station was committed on 22nd October, 2003 at about 6 PM. The time-gap between the two offences can be said to be about nine months. The third offence referred to by the detaining authority in the grounds conveyed to the detenu was registered on 8th June, 2004 though committed on 5th May, 2004. This was also after a gap of more than six months. It is rightly argues that this factual matrix gives impression that the activity of the

petitioner can be at the most said to be prejudicial to the maintenance of law and order and there was no reason for the detaining authority to record the subjective satisfaction to the effect that the activity of the petitioner was threat to the maintenance of public order.

4 I have considered the stand taken by the detaining authority of the explanation emerging from the details of reply affidavit submitted. Even if the say of the other side is to be accepted to be true, it is difficult for the Court to hold that there was sufficient ground to record the subjective satisfaction to the effect that the activity of the petitioner is prejudicial to the maintenance of public order. Less drastic order of externing the petitioner from the concerned area could have been passed in order to prevent the petitioner from committing similar type of offences in particular areas of City of Rajkot. Though the order of detention is assailed on many grounds, the petition is required to be accepted for the above assigned reasons. Such an order of detention cannot be sustained in the eye of law. The petition is therefore allowed.

5 During the course of oral submissions, when certain queries were raised to the learned counsel appearing for the petitioner, Mrs Patel has fairly accepted that the petitioner is ready to stay outside limits of Rajkot taluka for a reasonable period i.e. for a period of six months i.e. upto 30th April, 2005 so that the petitioner may not have to face any further externment proceedings. The Court accepts the voluntary statement made on behalf of the petitioner by the learned counsel for the petitioner, Mrs Patel, and now in compliance with the statement made by the learned counsel for the petitioner the petitioner shall not enter the limits of City and Taluka of Rajkot City till 30th April, 2005. The authority can monitor the compliance of the statement made by the learned counsel for the petitioner today on behalf of the petitioner.

6 For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17th May, 2004 passed by Commissioner of Police, Rajkot, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

[ C. K.BUCH, J]

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